APPENDIX A

OPINION OF THE SUPREME COURT OF ILLINOIS IN THIS CASE

The People *ex rel.* Gloria Stollar, Appellant, v. Richard B. Ogilvie, Sheriff, Appellee.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

Gloria Stollar was found guilty of contempt of court in the former probate court of Cook County and sentenced to imprisonment in the county jail for a term of 18 months. No request was made for trial by jury. That judgment was affirmed by this court. (*People* v. *Stollar,* 31 Ill.2d 154.) Subsequently, she filed a petition for a writ of *habeas corpus* in the circut court of Cook County which, on motion of respondent, was dismissed. An appeal from that dismissal comes directly here. Ill. Const. art. VI, sec. 5, our Rule 28—1.

The sole question presented for our consideration is whether there exists a constitutional right to trial by jury in a criminal contempt case, particularly where the ultimate penalty imposed may be greater than one year's imprisonment.

We have only last term, in *People* v. *Bloom,* 35 Ill.2d 255, reaffirmed our theretofore consistently maintained position that the right to trial by jury is not available in a proceeding for criminal contempt. We noted that a criminal contempt is an offense against the court as an organ of public justice and the necessity for a summary proceeding for punishment of such offenses is essential to performance of the judicial function. We reviewed at some length the applicable law in this area and stated that "* * * the exercise of summary contempt power is not restricted to

offenses that may be classified as 'trivial' or 'petty' but applies as well—perhaps its exercise is even more important—where the offense is a serious one. (*United States* v. *Barnett*, 376 U.S. 681, 12 L.Ed. 2d 23.) Since there now exists a right of review in contempt proceedings, adequate protection is afforded against errors and abuses in a trial before the judge."

We are mindful of the *dictum* in *Barnett* indicating that some of the members of the United States Supreme Court "are of the view that, without regard to the seriousness of the offense, punishment [of contempt of court] by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses" (376 U.S. 681, f.n. 12, 12 L.Ed. 2d 23, 31, 84 S.Ct. 984, 991-92,) and are also cognizant of the fact that the United States Supreme Court, acting under its supervisory power over the lower Federal courts, has ruled that "* * * sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived.'" (*Cheff* v. *Schnackenberg*, 384 U.S. 373, 16 L.Ed 2d 629, 634, 86 S. Ct. 1523, 1526.) Moreover, at least two justices of that court are of the opinion that trial by jury is required in all criminal contempt cases before punishment may be imposed. (*Cheff* v. *Schnackenberg*, 384 U.S. 373, 86 S. Ct. 1523, 1526, dissenting opinion of Mr. Justice Douglas.) However, we are not persuaded that it is either necessary or desirable to require trial by jury in criminal contempt cases and thus alter the existing law of this State. We therefore adhere to the principles recently announced in Bloom.

The judgment of the circuit court of Cook County is accordingly affirmed.

Judgment affirmed.

APPENDIX B

OPINION OF THE SUPREME COURT OF ILLINOIS IN PRIOR CASE

The People of the State of Illinois, Defendant in Error, v. Gloria Stollar, Plaintiff in Error.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

This is a writ of error to review a judgment of the probate court of Cook County which found the respondent, Gloria Stollar, guilty of contempt of court and sentenced her to imprisonment in the county jail for 18 months. The respondent does not challenge the sufficiency of the proof to establish her guilt, but contends that her constitutional rights were violated because the trial court erred in failing to conduct a hearing to determine her sanity, because she was induced by promises of leniency to admit the charges made against her, and because the request of her attorney for a continuance was denied. She also contends that the sentence was excessive upon the facts, and that it exceeded the permissible statutory maximum.

Harry Stollar, the respondent's husband, died May 9, 1959. He left the bulk of his estate to their daughter, Jacqueline, who was then five years old. The respondent was appointed guardian of her daughter's estate. On July 15, 1959, she filed her inventory as guardian, showing assets in the form of cash in the sum of $47,784.90. Of this amount, $81.09 remained on July 13, 1962. In addition, she received the proceeds of two insurance policies payable to Jacqueline in the total sum of $24,296.05, which were not included in the inventory that she filed as guardian. The bank account in which she deposited this amount was closed on June 8, 1960, by the last withdrawal in the sum of $5100.

On September 24, 1962, the attorney who represented the respondent as guardian filed a petition reciting that she had refused to cooperate with him, alleging his belief that she had withdrawn considerable moneys from the minor's estate over and above the amounts authorized by orders of the court, and asking leave to withdraw his appearance as attorney for the guardian. Notice of this petition had been mailed to the respondent on September 4, 1962. A guardian *ad litem* was appointed to investigate the allegations of the petition. The report of the guardian *ad litem* disclosed the condition of the estate and the existence of the two insurance policies that had not been inventoried. A rule to show cause was issued, hearings were conducted and the judgment under review was entered.

The rule to show cause was returnable November 2, 1962. The respondent did not appear on that date. Later it was learned that she had given birth to a child on November 1, 1962, and was hospitalized. The hearing on the rule to show cause was continued to November 13, 1962. The contention that a sanity hearing was required was not raised in the trial court by the attorney who represented the respondent. As asserted now, it is based upon two statements made during the course of the proceedings. The first was made by an assistant state's attorney on November 9. He said: "The record will show that the reason why she failed to appear was that she was suffering from an emotional disturbance * * * and we were not given the information as to what hospital or where she was." The second statement was made by the guardian *ad litem* on November 13, at the outset of the hearing on the rule to show cause. He said: "I have come to the court, not only on behalf of the minor, but wish to relate for the father of Mrs. Stollar, who was on one former occasion before Judge Cooney, and

pleaded that Mrs. Stollar has been emotionally disturbed and upset and that some mercy should be given to her and that she should be examined and cared for by a psychiatrist." Both of these remarks must be appraised in the context of all that transpired before the court, and particularly in view of the desire of the respondent, expressed by her father, to keep the birth of the child from being a "public record." So appraised, we are of the opinion that they can not fairly be taken as indicating that anyone connected with the proceeding in the trial court thought that the mental condition of the respondent was such that a sanity hearing was indicated. The attorney who represented respondent there made no such suggestion, and the written motion for a new trial that he filed made no such claim.

The motion for a new trial, however, did assert that the defendant's constitutional rights were violated because the court refused to grant her sufficient time to prepare her defense and because the guardian *ad litem* misled the respondent into what amounted to a plea of guilty by the respresentation that he would recommend leniency. No request for a continuance was made before the hearing commenced. After the respondent had testified for some time, her attorney requested "a short continuance." The court immediately adjourned the proceedings until three o'clock in the afternoon. On the following morning, when her attorney asked for a continuance "to give me time to prepare my case," the request was denied.

At the outset of the hearing, the guardian *ad litem* represented to the court, in the presence of respondent and her attorney, that her attorney had agreed that if the record so warranted, he would "consent and agree to vacating the order of appointment of Mrs. Stollar as guardian. If there is a finding of fraud of both the inventory and the

current account, he is still willing to leave it up to the mercy of the court as to any judgment or punishment that Mrs. Stollar should receive." He then continued with the statement that has been quoted earlier in this opinion. The court inquired as to whether this statement was satisfactory to Mrs. Stollar and then announced that it was satisfactory both to her and to her attorney. Moreover, the plaintiff in error testified that she had voluntarily indicated that she was willing to inform the court of all that had occurred in the performance of her duties as guardian of the estate and to place herself on the mercy of the court. She testified that she was not coerced to do this and that the court had made no promise that the judgment and punishment of the court "will be any less than you should receive."

These circumstances do not, in our opinion, indicate that the respondent was prevailed upon by promises of leniency to testify concerning her management of her daughter's estate, or that the trial court erred in refusing a continuance after the hearing had commenced.

The respondent's contention that the sentence of 18 months exceeded the maximum permitted by statute is based upon that portion of section 1—7 of the Criminal Code of 1961 which provides, "The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided may sentence the offender to a term of imprisonment not to exceed one year or a fine not to exceed $1,000, or both." (Ill. Rev. Stat. 1961, chap. 38, par. 1—7.) The respondent reads this provision as limiting the permissible sentence that may be imposed for contempt of court. But that it relates only to those offenses defined in the Code, and does not apply to contempt of court is, in our opinion, made clear by section 1—3: "No conduct con-

stitutes an offense unless it is described as an offense in this Code or in another statute of this State. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree." Ill. Rev. Stat. 1961, chap. 38, par. 1—3.

To establish the excessiveness of the sentence, considered not as a matter of law but in the light of the facts disclosed by the record, the respondent argues that the mishandling of her daughter's estate was not due to a conscious attempt to commit a theft, but was due rather to her belief that her daughter's money was indistinguishable from her money, and to her lack of business knowledge. The record shows, however, that she understoodd what she was doing. The agent for the insurance company that had issued the two policies payable to her daughter, which the respondent had concealed, testified that she offered him the sum of $2000 if he would see that the checks in payment of the policies were made payable to her individually rather than as guardian of her child's estate. She admitted this. In addition, in arranging for the transfer of other funds into an account from which she was able to withdraw without court approval, she executed false affidavits stating that certain bank books had been lost, when she knew they were in the possession of her attorney. This, too, she admitted. And to bring about the transfer of these deposits she hired a lawyer other than the attorney who represented her as guardian. In the light of these circumstances, we can not say that the trial court abused its discretion in imposing sentence.

The judgment of the probate court of Cook County is affirmed.

Judgment affirmed.

APPENDIX C

PROCEEDINGS IN TRIAL COURT

Petition For A Writ of Habeas Corpus

Now comes Gloria Stollar, Petitioner herein, and respectfully represents unto this Court as follows:

1. That she is imprisoned and restrained of her liberty in the custody of the Respondent, Richard B. Ogilvie, Sheriff of Cook County, Illinois, in the common jail of Cook County, Illinois;

2. That the cause or pretense of her restraint is a certain order of the Probate Court of Cook County, Illinois entered November 23, 1962, adjudging her guilty of contempt of court and sentencing her to the Cook County Jail for a term of eighteen months; further, that your petitioner is not committed nor detained by virtue of any process, judgment, decree or execution specified in section 21 of "An Act to revise the law in relation to habeas corpus." Approved March 2, 1874. R.S.1874, p. 565. Illinois Revised Statutes (1963), Chapter 65, §21, the time during which your petitioner may be legally detained having expired;

3. That a copy of the process under which your petitioner was committed is attached hereto; [omitted]

4. That the reason for the expiration of the time during which your petitioner could be legally detained is that she was tried in the Probate Court of Cook County for contempt of court in summary proceedings and summary trial in which she was not accorded the opportunity to be

tried by a jury; that the Sixth Amendment to the Constitution of the United States provides that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." This Amendment was made applicable to the States by *Gideon* v. *Wainwright,* 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed. 2d 799; *Pointer* v. *Texas,* 380 U.S. 400, 85 S. Ct. 1065, 13 L.Ed. 2d 923; and *Douglas* v. *Alabama,* 380 U.S. 415, 85 S. Ct. 1074, 13 L.Ed.2d 934. In *United States* v. *Barnett,* 376 U.S. 681, 84 S. Ct. 984, ... L.Ed.2d ....., the Supreme Court of the United States indicated that without regard to the seriousness of the offense, punishment [of contempt of court] by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses, see also *Harris* v. *United States,* ..... U.S. ....., 85 S. Ct. 438 15 L.Ed.2d 240. In the Federal system, the maximum penalty for a petty offense is six months or a fine of not more than $500.00 or both. Title 18, U.S.C. §1. Therefore, so much of her sentence as exceeds six months is void and the six months having expired, your petitioner ought to be released.

Wherefore, your petitioner prays that writ of habeas corpus issue pursuant to the Statutes in such case made and provided, directed to the Sheriff of Cook County, Illinois, so that the said Gloria Stollar, Petitioner, may be forthwith brought before this Honorable Court and that upon the return of the writ, a day certain may be fixed for a hearing to an end that the legality of her custody and restraint may be inquired into and determined.

Motion to Dismiss

Now Comes Richard B. Ogilvie, Sheriff of Cook County, Illinois, espondent herein, by Daniel P. Ward, State's Attorney of Cook County, Illinois, his Attorney, and moves the Court to dismiss the petition for a Writ of Habeas Illinois, respondent herein, filed herein and alleges:

1. That Gloria Stollar, the relatrix, is in his custody by and under the authority of a contempt mittimus issued by the Probate Division of the Circuit Court of Cook County and that when said Court issued the said mittimus against the relatrix it had full jurisdiction of the subject matter, of the person of the relatrix and power to issue the particular mittimus.

2. That the causes for which a person held on process of court may be discharged from custody in the State of Illinois are enumerated in Chapter 65, Section 22 of the Illinois Revised Statutes 1963 and that the relatrix has failed to bring herself within any of the provisions of said statute and a person committed to jail for contempt of court cannot be discharged on habeas corpus. *Ex Parte Smith,* 117 Ill. 63; *Peo. ex rel Davis* v. *Foster,* 104 Ill. 156; *Peo. ex rel. Hinckley* v. *Pirfenbrink,* 96 Ill. 68.

3. Further answering respondent denies the allegations set forth in paragraph 4 of relatrix's petition and alleges that the laws and authorities cited therein are inapplicable to the said contempt proceedings had in the Probate Division of the said Circuit Court.

Wherefore, respondent prays that the petition for a Writ of Habeas Corpus heretofore filed herein be dismissed.

Order of Dismissal

And the Court hearing the Arguments of Counsel in support of said Petition for Habeas Corpus as well as the State's Attorney, Counsel for the Respondent in opposition thereto and the Court having inquired into the cause of the caption and detention of the said Relatrix Gloria Stollar, and being fully advised in the premises doth Sustain the Motion of the Respondent to Dismiss the foregoing entitled cause and doth further order that the Petition for Habeas Corpus be and the same is hereby Dismissed.

APPENDIX D

JUDGMENT ORDER OF THE SUPREME COURT OF ILLINOIS OF WHICH REVIEW IS SOUGHT

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error.